

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

GEORGE RAYMOND WHIPPLE,

Petitioner,

v.

DONALD HOLBROOK,

Respondent.

NO: 4:16-CV-05034-SMJ

ORDER DISMISSING HABEAS  
PETITION

BEFORE THE COURT is a *pro se* “Petition for Writ of Habeas Corpus Under U.S.C. § 2241,” ECF No. 3, electronically submitted by Petitioner, a prisoner housed at the Washington State Penitentiary. The \$5.00 habeas corpus filing fee was paid. Respondent has not been served.

Petitioner claims to bring this action pursuant to 28 U.S.C. § 2241. However, “§ 2254 is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment, even when the petitioner is not challenging his underlying state court conviction.” *White v. Lambert*, 370 F.3d

1 1002, 1009-10 (9th Cir. 2004), *overruled on other grounds by* *Hayward v.*  
2 *Marshall*, 603 F.3d 546 (9th Cir. 2010).

3 Nevertheless, the Court finds that a habeas petition is not the proper vehicle  
4 for the claims Petitioner presents. The “traditional purpose” of habeas corpus is to  
5 allow an inmate seeking “immediate or more speedy release” to challenge his  
6 confinement. *Preiser v. Rodriguez*, 411 U.S. 475, 494 (1973). Here, Petitioner is  
7 essentially complaining about the conditions of his confinement, asserting “cruel  
8 and unusual punishment” under the Eighth Amendment.

9 Because Petitioner does not challenge the constitutional validity or duration  
10 of his confinement, his claims are not cognizable in a habeas proceeding. *See* 28  
11 U.S.C. § 2254(a); *Preiser v. Rodriguez*, 411 U.S. at 500. An action pursuant to 42  
12 U.S.C. § 1983 is a proper remedy for a state prisoner who is making a  
13 constitutional challenge to the conditions of his prison life, but not to the fact or  
14 length of his custody. *Id.*, at 499; *McIntosh v. United States Parole Comm’n*, 115  
15 F.3d 809, 811-12 (10th Cir. 1997).

16 Petitioner does not assert that his state court convictions violate the  
17 Constitution or laws or treaties of the United States. Rule 4 of the Rules Governing  
18 Section 2254 Cases provides for the summary dismissal of a habeas petition “[i]f it  
19 plainly appears from the face of the petition and any exhibits annexed to it that the  
20

petitioner is not entitled to relief in the district court.” Here, it is clear that  
Petitioner is not seeking nor is he entitled to federal habeas relief.

**Therefore, IT IS HEREBY ORDERED:** the Petition, **ECF No. 3**, is  
**DISMISSED without prejudice.** If Petitioner wishes to challenge the conditions  
of his confinement, he must file a new and separate civil rights complaint pursuant  
to 42 U.S.C. § 1983, for which he will be responsible to pay the filing fee under 28  
U.S.C. § 1915(b).

**IT IS SO ORDERED.** The Clerk’s Office shall enter this Order, enter  
judgment, forward a copy to Petitioner at his last known address and close the file.  
The Court further certifies that there is no basis upon which to issue a certificate of  
appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

**DATED** this 11<sup>th</sup> day of May 2016.

A handwritten signature in blue ink, reading "Salvador Mendoza Jr.", is written over a horizontal line.

SALVADOR MENDOZA JR.  
United States District Judge